REMARKS/ARGUMENTS

Applicants' undersigned representative would like to think the Examiner for granting the personal interview conducted on May 5, 2004. As discussed in the interview, further arguments explaining the difference between the disclosure of the Kurakake patent and the presently claimed invention are provided below.

Claims 1-10 stand rejected under 35 U.S.C. 103(a) over U.S. Patent No. 5,900,564 to Kurakake (hereinafter "Kurakake") in view of U.S. Patent No. 6,587,684 to Hsu et al. (hereinafter "Hsu"). For the following reasons, the rejection is respectfully traversed.

As discussed in the above-mentioned interview, and in response to the Examiner's "Response to Arguments" in the Office action (page 2), Applicants make the following remarks. Claims 1 and 8, as written, introduce "music data" and then requires the downloading of "software corresponding to a music data format defined in connection with *the* music data." In the Office action, the Examiner asserted that Kurakake teaches downloading various applications to treat music data. Applicants do not disagree. However, this teaching of Kurakake does not satisfy the limitations of claims 1 and 8. The limitations of claims 1 and 8 specify that the software downloaded must correspond to *the* music data, not just any music data. The fact that the applications downloaded by Kurakake might *include* an application for treating music data just downloaded does not satisfy the limitations of claim 1. The "corresponding" limitations of claims 1 and 8 require that application software is downloaded with consideration of the particular format of the downloaded music data. Put another way, the applications downloaded in Kurakake are the same applications regardless of the format of the particular music data provided. Thus there is no *correspondence* as required by claims 1 and 8. Claim 6, similarly requires that the application software selected for a step of downloading *corresponds* to the

format of music data retrieved in another step. Therefore, any combination of Kurakake and Hsu would not teach or fairly suggest *each and every* limitation of claims 1, 6 and 8, and their respective dependent claims 2-5, 7, 9 and 10.

Further, Applicants respectfully submit that, at the time the present invention was made, it would not have been obvious to one of ordinary skill in the relevant art to modify the teachings of Kurakake based on the teachings of Hsu in order to arrive at the present invention. The Examiner is respectfully reminded that: "The Examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. If the Examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness." (See MPEP § 2142.) Further, the Examiner is reminded that: "To establish a *prima facie* case of obviousness . . . there must be some suggestion or motivation . . . to modify the reference or to combine reference teachings." (See MPEP § 2143.)

Thus, although the Applicants are under no obligation to submit evidence of nonobviousness, the following observations are submitted for the Examiner's convenience. Kurakake is cited as the base reference for rejecting claim 1-10 as obvious. Hsu is cited for modifying Kurakake. Kurakake teaches a music data apparatus or terminal apparatus. Kurakake does not make any reference to the application of its teachings to a portable cellular phone such as that taught by Hsu. Nonetheless, the Examiner asserts that it would be obvious to modify the music data apparatus of Kurakake to implement a portable cellular phone. Applicants respectfully point out that the Hsu reference establishes nothing more than the fact that digital telephones having software downloading capabilities existed at the time of the filing of the present patent application. However, the mere existence of such digital telephones does not make it obvious to transform a device that is unrelated to telephones, such as the terminal

apparatus of Kurakake, into a telephone. If the Examiner intends to maintain the obviousness rejection, Applicants respectfully request that the Examiner provide an explanation of what suggestion or motivation he is relying upon to support his conclusion of obviousness.

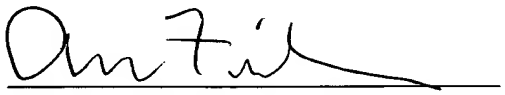
Applicants' previous arguments relating to the teachings of Kurakake as applied to the instant claims, although not restated herein for the sake of brevity, are hereby renewed. Thus, even if Kurakake and Hsu were combined, all the claim limitations of the presently claimed invention would not be taught or suggested (see MPEP § 2143.03).

In light of the foregoing, it is respectfully submitted that the application as amended is in a condition for allowance and notice to that effect is hereby requested. If it is determined that the application is not in condition for allowance, the Examiner is invited to initiate a telephone interview with the undersigned attorney to expedite prosecution of the application.

If there are any additional fees resulting from this communication, please charge the same to our Deposit Account No. 16-0820, our Order No. 32892.

Respectfully submitted,

PEARNE & GORDON LLP

By: 

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